

REMARKS/ARGUMENTS

In the election of species requirement dated January 10, 2008, the Examiner required the election of a single pharmaceutically active substance in bound form present in the multilayer dosage form.

Accordingly, applicants elect without traverse the species 5-aminosalicylic acid, with claims 1-9 reading on the elected species.

Applicants request that should the elected species be found allowable, the Examiner expand the search to include non-elected species.

Divisional applications filed thereafter claiming the non-elected species should not be subject to a double patenting ground of rejection 35 U.S.C. § 121, *In re Joyce* (Comr. Pat. 1957) 115 USPQ 412.

The Examiner alleges that the species recited in the specification are patentably distinct. However, the burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinction M.P.E.P. 803.

The Office has failed to meet the burden necessary to sustain the election requirement, and the Office has not shown that a burden exists in searching all of the species.

Applicants make no statement regarding the patentable distinctness of the species, but note that for the election to be proper, there must be patentable differences between the species as claimed (M.P.E.P. 808.01(a)).

Applicants' election is for examination only.

Respectfully submitted,

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